

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Karina Herrera	Team: Squad #9	CCRB Case #: 201802302	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/03/2018 2:21 PM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 7/3/2019	EO SOL 7/3/2019	
Date/Time CV Reported Mon, 03/26/2018 11:00 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 03/26/2018 11:00 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Jason Garcia	02362	919084	WARRSEC
2. DT3 Michael Perez	02470	930939	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT2 Matthew Brennan	92	929773	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Michael Perez	Force: Detective Michael Perez pointed his gun at § 87(2)(b)	§ 87(2)(b)
B.DT2 Jason Garcia	Force: Detective Jason Garcia pointed his gun at § 87(2)(b)	§ 87(2)(b)
C.DT2 Jason Garcia	Discourtesy: Detective Jason Garcia spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.DT3 Michael Perez	Discourtesy: Detective Michael Perez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.DT2 Jason Garcia	Abuse: Detective Jason Garcia threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
F.DT3 Michael Perez	Discourtesy: Detective Michael Perez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G.DT2 Jason Garcia	Discourtesy: Detective Jason Garcia spoke discourteously to § 87(2)(b)	§ 87(2)(b)
H.DT2 Jason Garcia	Abuse: Detective Jason Garcia threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

### Case Summary

On March 26, 2018, § 87(2)(b) filed the following complaint in-person at the CCRB.

At approximately 2:21 p.m. on January 3, 2018, § 87(2)(b) exited a residential building, which was located at § 87(2)(b) in Brooklyn, when two officers, Detective Jason Garcia and Detective Michael Perez from the Warrant Squad, exited an unmarked police vehicle that was parked across the street from the building. The officers were apprehending § 87(2)(b) under active I-Card #§ 87(2)(b) for attempting to § 87(2)(e), § 87(2)(f) (Board Review 01).

Detective Garcia and Detective Perez approached § 87(2)(b) and grabbed each of his arms. Detective Garcia and Detective Perez drew their firearms and allegedly pointed them at § 87(2)(b) (**Allegation A: Force – Gun Pointed, § 87(2)(g)**) (**Allegation B: Force – Gun Pointed, § 87(2)(g)**). Another officer, Detective Matthew Brennan from the Warrant Squad, exited the police vehicle and approached § 87(2)(b) as well.

While against the police vehicle, § 87(2)(b) told the officers that they did not know him. Detective Garcia and Detective Perez allegedly told § 87(2)(b) “We know who the fuck you are. We fucking know you” (**Allegation C: Discourtesy – Word, § 87(2)(g)**) (**Allegation D: Discourtesy – Word, § 87(2)(g)**). Detective Garcia drew his taser and threatened to use it (**Allegation E: Abuse of Authority – Threat of Force, § 87(2)(g)**). Detective Garcia instructed § 87(2)(b) to stop resisting and he did so. Detective Garcia holstered his taser, and as the officers were handcuffing him, § 87(2)(b) s aunt, § 87(2)(b) exited the apartment building and approached the incident. § 87(2)(b) asked the officers what was going on. Detective Perez allegedly told § 87(2)(b) “Just get the fuck away from the truck” (**Allegation F: Discourtesy – Word, § 87(2)(g)**). § 87(2)(b) asked § 87(2)(b) what was going on and Detective Perez allegedly told her, “Get the fuck away from him” (**within Allegation F**).

§ 87(2)(b) returned to the residential building, and shortly afterwards, her daughter, § 87(2)(b) exited the apartment building. From across the street, § 87(2)(b) asked the officers if § 87(2)(b) was inside of the police vehicle. Detective Garcia allegedly replied, “I don’t have to answer any fucking questions” (**Allegation G: Discourtesy – Word, § 87(2)(g)**). § 87(2)(b) asked Detective Garcia which stationhouse § 87(2)(b) was being taken to. Detective Garcia allegedly replied, “We don’t have to tell you shit” (**within Allegation G**). § 87(2)(b) told Detective Garcia that she knew that the police had to respond to her questions. Detective Garcia allegedly told § 87(2)(b) to go back to her apartment or else he was going to tase her (**Allegation H: Abuse of Authority – Threat of Force, § 87(2)(g)**). § 87(2)(b) returned to the apartment building and the officers left the incident location with § 87(2)(b).

§ 87(2)(b) was arrested and charged with § 87(2)(b) (Board Review 07). This case was on DA Hold from April 12, 2018 to May 17, 2019. Video footage of the entire incident was obtained from a surveillance camera that was attached to an Affordable Self Storage facility (Board Review 02).

## **Findings and Recommendations**

**Allegation (A) Force: Detective Michael Perez pointed his gun at § 87(2)(b)**

**Allegation (B) Force: Detective Jason Garcia pointed his gun at § 87(2)(b)**

**Allegation (E) Abuse of Authority: Detective Jason Garcia threatened § 87(2)(b) with the use of force.**

It is undisputed that Detective Perez pointed his firearm at § 87(2)(b) prior to placing him in handcuffs. It is also undisputed that § 87(2)(b) was arrested for § 87(2)(b) regarding an incident that occurred on § 87(2)(b). § 87(2)(e), § 87(2)(f)

It also noted that the firearm was not recovered (Board Review 01).

§ 87(2)(b) stated that Detective Perez and Detective Garcia exited a police vehicle and approached him. Detective Perez and Detective Garcia grabbed each of § 87(2)(b)'s forearms. The officers then immediately drew their firearms and pointed them at § 87(2)(b)'s face.

Detective Perez stated that he pointed his firearm at § 87(2)(b) because § 87(2)(b) was a convicted violent offender who was being apprehended for a violent felony crime that involved a firearm. After he saw that § 87(2)(b) did not appear to be armed or dangerous, he holstered his firearm. Detective Perez did not see any other officers with their firearms pointed at § 87(2)(b).

Detective Garcia stated that he did not point his firearm at § 87(2)(b) at any point during the incident and he did not know if any of the other officers pointed their firearms at him. However, Detective Garcia stated that he drew his taser during the incident and threatened to use it in order to gain compliance from § 87(2)(b) did not make this allegation.

Detective Brennan stated that he did not see any officers with their firearms pointed at § 87(2)(b).

Video footage obtained from Affordable Self Storage facility (Board Review 02) shows Detective Perez drawing his firearm at nine seconds into the video and then holstering it at 11 seconds into the video. At 10 seconds into the video, Detective Garcia is seen approaching § 87(2)(b) and grabbing his left arm, but it does not clearly show if Detective Garcia points anything at § 87(2)(b) because the police vehicle obstructs the view of him. Detective Brennan exits the police vehicle as Detective Perez is holstering his firearm.

According to NYPD Patrol Guide Procedure 221-01, an officer may use force when it is reasonable to ensure the safety of an officer, or when it is reasonable to prevent a person from escaping custody (Board Review 08).

NYPD Patrol Guide Procedure 221-08 defines a laser warning as pointing and placing the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance. (Board Review 04).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Discourtesy: Detective Jason Garcia spoke discourteously to § 87(2)(b)**  
**Allegation (D) Discourtesy: Detective Michael Perez spoke discourteously to § 87(2)(b)**  
**Allegation (F) Discourtesy: Detective Michael Perez spoke discourteously to § 87(2)(b)**  
**Allegation (G) Discourtesy: Detective Jason Garcia spoke discourteously to § 87(2)(b)**  
**Allegation (H) Abuse of Authority: Detective Jason Garcia threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that right before he was handcuffed he told the officers that they did not know him. Detective Garcia and Detective Perez replied, “We know who the fuck you are. We fucking know you.” § 87(2)(b) eventually exited the apartment building and asked the officers what they were doing, but § 87(2)(b) did not provide any other details regarding their conversation. § 87(2)(b) eventually returned to the apartment building, and shortly afterwards, § 87(2)(b) exited it. § 87(2)(b) asked the officers which stationhouse § 87(2)(b) was being taken to. Detective Garcia replied, “We don’t have to tell you shit.”

§ 87(2)(b) stated that she exited the apartment building as the officers were handcuffing § 87(2)(b) and she asked the officers what was going on. Detective Perez replied, “Just get the fuck away from the truck.” § 87(2)(b) asked § 87(2)(b) what was going on, and Detective Perez told her, “Get the fuck away from him.” § 87(2)(b) eventually returned to the apartment building and she remained there while § 87(2)(b) went to speak to the officers. § 87(2)(b) did not observe § 87(2)(b)’s interaction with the officers.

§ 87(2)(b) stated that when she exited the apartment building she believed § 87(2)(b) was already inside of the police vehicle. § 87(2)(b) asked the officers if § 87(2)(b) was inside of the police vehicle and Detective Garcia replied, “I don’t have to answer any fucking questions.” § 87(2)(b) told Detective Garcia that she knew the police had to answer her questions. Detective Garcia told § 87(2)(b) to go back to her apartment or he would tase her. § 87(2)(b) returned to her apartment and the officers left the incident location with § 87(2)(b).

Detective Garcia stated that none of the officers used any profanity during the incident, including himself. Detective Garcia did not recall seeing § 87(2)(b) or § 87(2)(b). Although Detective Garcia was equipped with a taser on the incident date, he denied threatening § 87(2)(b) with the use of it and he was unaware of any other officers who did.

Detective Perez stated that after § 87(2)(b) was placed inside of the police vehicle, a female exited the apartment building and began yelling at the officers. Detective Perez did not remember what she said or

who she spoke to. Detective Perez did not remember conversing with the female and he was unaware of any other civilians who attempted to speak with the officers during the incident. Detective Perez stated that none of the officers used any profanity during the incident, including himself. All of the officers are taser certified, but only Detective Garcia was equipped with a taser on the incident date. None of the officers, including Detective Perez, threatened anyone with the use of a taser.

Detective Brennan stated that after § 87(2)(b) was placed in the police vehicle, he heard a female yelling, “You can’t arrest him – he was just going to the store.” Detective Brennan believed he told the female, “He’s going to the precinct.” Detective Brennan did not recall any additional females that arrived in regards to the incident. Detective Brennan did not use any profanity during the incident and he was unaware of any other officers who did so. Detective Brennan stated that although all the officers were taser certified, only Detective Garcia was equipped with a taser on the incident date. None of the officers, including Detective Brennan, threatened any female with the use of a taser.

At 2:14 into the video obtained from Affordable Self Storage facility (Board Review 02), a female is seen approaching the rear of the police vehicle as Detective Perez, Detective Garcia, Detective Brennan, and § 87(2)(b) are standing on the right side of it (Board Review 02). The video does not clearly show if the female was § 87(2)(b) or § 87(2)(b). The video could not determine if there was any verbal interaction between Detective Perez, Detective Garcia, Detective Brennan, and the female because - as previously mentioned - the video footage does not contain any audio. No additional females appear throughout the video.

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review 05).
- Detective Garcia has been a member of service for 22 years and has been a subject in two CCRB complaints and two allegations, of which one was substantiated:
  - Case #201508555 involved a substantiated allegation of premises entered and/or searched against Detective Garcia. The Board recommended Command Discipline B and the NYPD imposed formalized training.
  - § 87(2)(g)
- Detective Perez has been a member of service for 17 years and has been a subject in 10 CCRB complaints and 20 allegations, of which one was substantiated:
  - Case #200702612 involved a substantiated allegation of a vehicle search against Detective Perez. The Board recommended charges and the NYPD imposed no discipline.
  - § 87(2)(g)

## Mediation, Civil and Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- On October 29, 2019, a Notice of Claim request was sent to the New York City Office of the Comptroller, and the results will be added to the case file upon receipt.

Squad No.: \_\_\_\_\_9\_\_\_\_\_

Investigator: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_